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LLC; AEQUITAS COMMERCIAL FINANCE, LLC; AEQUITAS
CAPITAL MANAGEMENT, INC.; AEQUITAS INVESTMENT
MANAGEMENT, LLC

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

AEQUITAS MANAGEMENT, LLC;
AEQUITAS HOLDINGS, LLC;
AEQUITAS COMMERCIAL FINANCE,
LLC; AEQUITAS CAPITAL
MANAGEMENT, INC.; AEQUITAS
INVESTMENT MANAGEMENT, LLC;
ROBERT J. JESENIK; BRIAN A. OLIVER;
and N. SCOTT GILLIS,

Defendants.

No. 3:16-cv-00438-JR

FINDINGS, RECOMMENDATIONS, AND
ORDER (1) APPROVING COMPROMISES
OF CLAIMS, (2) APPROVING AND
AUTHORIZING PERFORMANCE OF
SETTLEMENT AGREEMENTS, (3)
ENTERING CLAIMS BARS, and (4)
REMOVING A RECEIVERSHIP ENTITY
AND AN EXTENDED ENTITY

This matter having come before the Honorable Jolie A. Russo on the Receiver's Motion for Order (1) Approving Compromises of Claims, (2) Approving and Authorizing Performance of Settlement Agreements, (3) Entering Claims Bars, and (4) Removing a Receivership Entity and an Extended Entity [Dkt. 852] (the "Motion"), and the Court, being fully advised in the premises, now, therefore,

THE COURT FINDS as follows:

A. On March 10, 2016, the Securities and Exchange Commission ("SEC") filed a complaint in this Court against the Entity Defendants¹ and three individual defendants, Robert J. Jesenik, Brian A. Oliver, and N. Scott Gillis.

B. On March 16, 2016, pursuant to the Stipulated Interim Order Appointing Receiver, the Receiver was appointed as receiver for the Entity Defendants and 43 related entities on an interim basis (the "Interim Receivership Order"). On April 14, 2016, pursuant to the Final Receivership Order, the Receiver was appointed as receiver of the Entity Defendants and 43 related entities on a final basis.

C. Due, timely, and adequate notice of the Motion was given, and such notice was good, sufficient, and appropriate under the circumstances. No other or further notice of the Motion is or shall be required.

D. It is in the best interests of the Receivership Entity, its creditors, and investors to (1) approve a compromise of the Receivership Entity's claims against various individuals and entities on and pursuant to the terms of the Settlement Agreements, (2) approve and authorize the performance of the Settlement Agreements, (3) enter claims bars, and (4) remove (a) ACC Funding Series Trust 2015-5 from the Receivership Entity, and (b) Aequitas International Opportunities, LP, as an Extended Entity.

¹ Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Motion.

E. The terms of the Receivership Entity's compromises, as memorialized in the Settlement Agreements, are the result of good faith negotiations at arm's length after diligent investigation by the Receiver and, in the exercise of the Receiver's business judgment, are in the best interests of the creditors of, and investors in, the Receivership Entity.

F. In relation to the recommendation below to enter the proposed partial judgment, which accompanies these Findings, Recommendations, and Order, the Court further finds that:

- (i) The findings set forth in the proposed partial judgment are supported by the record.
- (ii) Where creditors of a receivership estate may have claims against third parties, including professionals, numerous district courts in receivership actions have barred certain further claims against those professionals in conjunction with authorizing settlements of certain other claims against the professionals. *See, e.g., SEC v. DeYoung*, 850 F.3d 1172, 1183 n.5 (10th Cir. 2017) (collecting examples of such cases).
- (iii) The availability of such orders facilitates settlement, promotes equitable recoveries by creditors, and maximizes assets available to creditors in the aftermath of a Ponzi scheme. *Zacarias v. Stanford Int'l Bank, Ltd.*, 931 F.3d 382, 398-99 (5th Cir. 2019).
- (iv) District courts often set forth claims bars in partial judgments entered pursuant to Rule 54(b). *SEC v. Alleca*, No. 1:12-cv-3261-WSD, 2016 U.S. Dist. LEXIS 64218, at *4-5 (N.D. Ga. May 16, 2016).
- (v) There are multiple claims and parties before this Court and, as set forth in settlement agreements filed by the Receiver, the settlement of claims involving certain parties was conditioned upon the Receiver seeking or obtaining claims bars. In particular, the Receiver seeks to bar:

(a) Any Contribution Claim (as that term is defined in the applicable Settlement Agreements);

(b) Pursued by any Individual Defendant, Director, Officer, Advisory Board Member, or Registered Investment Adviser;

(c) Where such a Contribution claim is against any of the Professional Firms—specifically, Tonkon Torp, LLP (“Tonkon”), Integrity Bank & Trust and Integrity Trust (together, “Integrity”), EisnerAmper LLP (“EisnerAmper”), Sidley Austin LLP (“Sidley”), TD Ameritrade, Inc. (“TD Ameritrade”), Duff & Phelps, LLC (“Duff”) or Deloitte & Touche LLP—or any of the Terrell Parties—specifically, Patrick Terrell, Richard Terrell, Kimberly Terrell, Meagan Terrell, Terrell Group Management, LLC (“TGM”) or PatRick Investments, LLC.

(vi) The proposed claims bar is reasonable and fair. It is tailored to bar only Contribution Claims of parties who were very closely affiliated with Aequitas and/or involved in the efforts to sell Aequitas Securities. Further, the Court accepts the Receiver’s business judgment that the Professional Firms and the Terrell Parties have made reasonable and in many cases generous payments benefiting the Defrauded Investors, the vast majority of whom are members of one of the Investor Litigation Groups, such that the Professional Firms and the Terrell Parties have, in effect, paid their fair share. In addition, if any party subject to the injunction barring Contribution Claims is sued by an Aequitas Investor, that party will receive the benefit of the earlier settlement between that Aequitas Investor and the Professional Firm or Terrell Party that would otherwise be subject to a contribution claim, in the form of a reduction of

any judgment entered against that party. Finally, the Professional Firms have afforded the Individual Defendants, former Directors and Officers, and former Advisory Board Members contingent releases.

- (vii) There is no just reason for delaying entry of a judgment effectuating the claims bars. The issues resolved by entry of the proposed Limited Judgment under Rule 54(b) are sufficiently distinct from those remaining before this Court that, if appellate review were sought, duplicative appellate review is unlikely. Further, entry of the claims bar order as a Limited Judgment under Rule 54(b) will facilitate finality, productively channel any direct attack on the order, and preclude collateral attack.

The Court, having reviewed the Motion, and being duly advised,

IT IS HEREBY ORDERED AND DECREED as follows.

1. The Motion is granted in its entirety as to each issue within the scope of Rule 72(a).
2. The Receivership Entity's compromises of the claims by and against the counterparties to the Settlement Agreements are approved.
3. The Settlement Agreements are approved.
4. The parties to the Settlement Agreements are authorized to perform their obligations thereunder and to take such actions and execute and deliver all documents and instruments required or reasonably contemplated thereby.
5. ACC Funding Series Trust 2015-5 is hereby removed from the Receivership Entity.
6. Aequitas International Opportunities, LP is hereby removed as an Extended Entity under the Final Receivership Order.

7. This Order shall be binding in all respects on all creditors and interest holders of the Receivership Entity and their successors and assigns.

Further, having reviewed the Motion, and being duly advised,

THE COURT RECOMMENDS as follows:

1. The District Court should grant the Motion in its entirety as to each issue within the scope of Rule 72(b).

2. The District Court should adopt the above-stated findings as its own.

3. The District Court should enter the proposed Limited Judgment, which accompanies these Findings, Recommendations, and Order.

Scheduling Order

The Findings and Recommendations will be referred to the Honorable Marco A. Hernández for review. Objections, if any, are due within fourteen (14) days. If no objections are filed, then the Findings and Recommendations will go under advisement on that date.

If objections are filed, then a response is due within fourteen (14) days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendations will go under advisement.

Dated this 10th day of November, 2020.

/s/ Jolie A. Russo

United States Magistrate Judge Jolie A. Russo

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SUBMITTED BY:

SCHWABE, WILLIAMSON & WYATT, P.C.

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